



Billing Code: 4333-15

## **DEPARTMENT OF THE INTERIOR**

### **Fish and Wildlife Service**

#### **50 CFR Part 20**

**[Docket No. FWS–HQ–MB–2019–0008; FF09M21200-189-FXMB1231099BPP0]**

**RIN 1018–BD90**

### **Migratory Bird Hunting; Normal Agricultural Operations**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Final rule.

**SUMMARY:** The Agriculture Improvement Act of 2018 includes a provision that directs the Secretary of the Interior to revise the Federal migratory bird hunting regulations in part 20 of title 50 of the Code of Federal Regulations. The provision directs the Secretary to clarify that rice ratooning and post-disaster flooding, when carried out as part of a normal agricultural operation, do not constitute baiting. Current Federal regulations in 50 CFR part 20 prohibit the use of baiting to attract birds when hunting. This rule implements the Congressional directives in the Agriculture Improvement Act of 2018 by making the necessary revisions to the migratory bird hunting regulations regarding rice ratooning and post-disaster flooding.

**DATES:** This action is effective [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** This final rule is available on the Internet at <http://www.regulations.gov> in Docket No. FWS–HQ–MB–2019–0008.

**FOR FURTHER INFORMATION CONTACT:** Ron W. Kokel, U.S. Fish and Wildlife Service, Department of the Interior, MS: MB, 5275 Leesburg Pike, Falls Church, VA 22041–3803; (703) 358–1967. If you use a telecommunications device for the deaf (TDD), call the Federal Relay Service at 800–877–8339.

**SUPPLEMENTARY INFORMATION:**

**Background**

In 1916, the United States and Great Britain (on behalf of Canada), signed a treaty to protect migratory birds. In 1918, Congress passed the Migratory Bird Treaty Act (MBTA) (16 U.S.C. 703–711) to implement the treaty with Canada. Among other things, the MBTA, as enacted, prohibited unauthorized hunting and selling of birds covered by the treaty. The United States later signed bilateral treaties with Mexico, Japan, and the Union of Soviet Socialist Republics to protect migratory birds. After each treaty was signed, Congress amended the MBTA to cover the species addressed in that treaty. Unless permitted by regulation, the MBTA prohibits the “taking” and “killing” of migratory birds (16 U.S.C. 703, 704).

“Take” is defined in part 10 of title 50 of the Code of Federal Regulations (CFR) as “to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect” (50 CFR 10.12). “Migratory bird” means any bird protected by any of the treaties and currently includes those bird species in the United States listed in 50 CFR 10.13, regardless of whether the particular species actually migrates.

Under the MBTA, the Secretary of the Interior is authorized to determine when “hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage,

or export” of migratory game birds can take place, and to adopt regulations for this purpose. The regulations governing the hunting of migratory game birds are located at 50 CFR part 20. The responsibility for issuing and enforcing the migratory game bird hunting regulations has been delegated to the U.S. Fish and Wildlife Service as the lead Federal agency for managing and conserving migratory birds in the United States.

### **Congressional Action**

The Agriculture Improvement Act of 2018 (Pub. L. 115-334, Act) was enacted on December 20, 2018. A provision of that act directs the Secretary of the Interior, within 30 days of enactment of the law and in consultation with the Secretary of Agriculture, to revise part 20 of title 50, Code of Federal Regulations, to clarify that rice ratooning and post-disaster flooding, when carried out as part of a normal agricultural operation, do not constitute baiting. Specifically, section 12601 of the Agriculture Improvement Act of 2018 defined “*normal agricultural operation*” as having the meaning given the term in § 20.11 of title 50, Code of Federal Regulations (as in effect on the date of enactment of this Act). Post-disaster flooding is defined as the destruction of a crop through flooding in accordance with practices required by the Federal Crop Insurance Corporation for agricultural producers to obtain crop insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) on land on which a crop was not harvestable due to a natural disaster (including any hurricane, storm, tornado, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, drought, fire, snowstorm, or other catastrophe that is declared a major disaster by the President in accordance with section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170)) in the crop year—

- in which the natural disaster occurred; or

- immediately preceding the crop year in which the natural disaster occurred.

Section 12601 of the Act defines “*rice ratooning*” to mean the agricultural practice of harvesting rice by cutting the majority of the aboveground portion of the rice plant but leaving the roots and growing shoot apices intact to allow the plant to recover and produce a second crop yield.

In addition, the Act requires the Secretary of the Interior, in consultation with the Secretary of Agriculture, not later than 30 days after its enactment to revise part 20 of title 50, Code of Federal Regulations, to clarify that rice ratooning and post-disaster flooding, when carried out as part of a normal agricultural operation, do not constitute baiting.

### **Current Regulations**

Terms that are used in the migratory bird hunting regulations in title 50 of the CFR are defined at 50 CFR 20.11 (2018 Edition). <https://www.govinfo.gov/content/pkg/CFR-2018-title50-vol9/pdf/CFR-2018-title50-vol9-sec20-11.pdf>. This section defines “*normal agricultural planting, harvesting, or post-harvest manipulation*” as meaning a planting or harvesting undertaken for the purpose of producing and gathering a crop, or manipulation after such harvest and removal of grain, that is conducted in accordance with official recommendations of State Extension Specialists of the Cooperative Extension Service of the U.S. Department of Agriculture. “*Normal agricultural operation*” is defined as meaning a normal agricultural planting, harvesting, post-harvest manipulation, or agricultural practice that is conducted in accordance with official recommendations of State Extension Specialists of the Cooperative Extension Service of the U.S. Department of Agriculture. “*Baited area*” means any area on which salt, grain, or other feed has been placed, exposed, deposited, distributed, or scattered, if

that salt, grain, or other feed could serve as a lure or attraction for migratory game birds to, on, or over areas where hunters are attempting to take them. Any such area will remain a baited area for 10 days following the complete removal of all such salt, grain, or other feed. Finally, § 20.11 defines “*bating*” to mean the direct or indirect placing, exposing, depositing, distributing, or scattering of salt, grain, or other feed that could serve as a lure or attraction for migratory game birds to, on, or over any areas where hunters are attempting to take them.

The regulations in 50 CFR 20.21 (2018 Edition) address illegal methods of hunting migratory birds; one of the prohibited practices includes the use of baiting to attract birds. The regulations pertinent to this rule are found in paragraph (i) of that section, see <https://www.govinfo.gov/content/pkg/CFR-2018-title50-vol9/pdf/CFR-2018-title50-vol9-sec20-21.pdf>.

### **Effects of the Rule**

This rule implements the directives set forth in section 12601 of Pub. L. 115-334. In compliance with that section, we have consulted with the office of the Secretary of Agriculture on this rule. That office concurs with this rulemaking action. To carry out the intent of Congress in the Agriculture Improvement Act of 2018 (Pub. L. 115-334), we hereby amend 50 CFR 20.11, by adding definitions of “post-disaster flooding” and “rice ratooning,” and 50 CFR 20.21(i)(1)(i), by adding these new terms to the regulations concerning baited areas. The new definitions and revised regulations are set forth at the end of this document in the rule portion.

Current regulations allow rice producers to grow rice to completion, harvest it, post-harvest manipulate it, flood it, and hunt over it. Rice growers may also grow rice to completion, not harvest or manipulate it, flood the rice, and hunt over it. If a rice grower chooses to manipulate un-harvested rice, then the growing area constitutes a baited area until all grain is

removed at least 10 days prior to hunting. Under this rule, growers can grow rice to completion, harvest it, let the second growth establish, and hunt over it. Growers cannot manipulate the second growth in any way that may expose seed. If the second growth is manipulated, the growing area constitutes a baited area until all grain is removed at least 10 days prior to hunting.

Regulations currently allow the grower of any crop to grow, harvest, post-harvest manipulate, flood, and hunt over the crop. A grower can raise a crop to completion, not harvest or manipulate it, then intentionally flood the crop for the purposes of hunting. If a grower does not harvest a completed crop and decides to manipulate it, the grower must adhere to the 10-day baiting rule prior to hunting. The revised regulations will allow hunting over a crop that is rendered “not harvestable” because of a disaster declaration under the Stafford Act and for which the Federal Crop Insurance Corporation has declared that the crop may be destroyed by flooding (and only flooding). No other manipulation is allowed. If the crop is manipulated by any means other than flooding, the growing area would be considered a baited area until all the grain is removed at least 10 days prior to hunting.

### **Effective Date**

This rule is effective upon publication in the *Federal Register*. Section 12601 of subtitle F of Pub. L. 115-334 directs the Secretary of the Interior to issue, within 30 days of enactment of the law, this final rule. Therefore, under these circumstances, we have determined, pursuant to 5 U.S.C. 553(b)(B), that prior notice and opportunity for public comment are impracticable and unnecessary. We have further determined, pursuant to 5 U.S.C. 553(d)(3), that the Congressional mandates imposed on the Department of the Interior by the Agriculture Improvement Act of 2018 constitute good cause to make this rule effective upon publication.

### **Required Determinations**

This rulemaking implements section 12601 of subtitle F of Pub. L. 115-334. Issuance of this rule is a nondiscretionary act for the U.S. Fish and Wildlife Service. Therefore, the promulgation of this rule is not subject to any other provision of statute or regulation that applies to the issuance of Federal rules. Accordingly, in issuing this rule, the Service has not made and is not required to make determinations otherwise required by statute, regulation, or Executive Order for the promulgation of Federal rules.

### **List of Subjects in 50 CFR Part 20**

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

### **Regulation Promulgation**

Accordingly, part 20, subchapter B, chapter I of title 50 of the Code of Federal Regulations is amended as follows:

### **PART 20—MIGRATORY BIRD HUNTING**

1. The authority citation for part 20 continues to read as follows:

AUTHORITY: 16 U.S.C. 703 et seq., and 16 U.S.C. 742a–j.

2. Amend § 20.11 by redesignating paragraphs (m) and (n) as paragraphs (o) and (p), respectively, and adding new paragraphs (m) and (n) to read as follows:

#### **§ 20.11 What terms do I need to understand?**

\* \* \* \* \*

(m) *Rice ratooning* means the agricultural practice of harvesting rice by cutting the majority of the aboveground portion of the rice plant but leaving the roots and growing shoot apices intact to allow the plant to recover and produce a second crop yield.

(n) *Post-disaster flooding* means the destruction of a crop through flooding in accordance with practices required by the Federal Crop Insurance Corporation for agricultural producers to obtain crop insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 et seq.) on land on which a crop was not harvestable due to a natural disaster (including any hurricane, storm, tornado, flood, high water, wind-driven water, tidal wave, tsunami, earthquake, volcanic eruption, landslide, mudslide, drought, fire, snowstorm, or other catastrophe that is declared a major disaster by the President in accordance with section 401 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5170)) in the crop year—

(1) In which the natural disaster occurred; or

(2) Immediately preceding the crop year in which the natural disaster occurred.

\* \* \* \* \*

3. Amend § 20.21 by revising paragraph (i)(1)(i) to read as follows:

**§ 20.21 What hunting methods are illegal?**

\* \* \* \* \*

(i) \* \* \*

(1) \* \* \*

(i) Standing crops or flooded standing crops (including aquatics); standing, flooded, or manipulated natural vegetation; flooded harvested croplands; or lands or areas where seeds or grains have been scattered solely as the result of a normal agricultural planting, harvesting, post-harvest manipulation, rice ratooning, post-disaster flooding, or normal soil stabilization practice;

\* \* \* \* \*

Dated: July 23, 2019.

**Karen Budd-Falen,**

*Deputy Solicitor for Parks and Wildlife,*

*Exercising the Authority of the Assistant Secretary for Fish and Wildlife and Parks.*

[FR Doc. 2019-16629 Filed: 8/7/2019 8:45 am; Publication Date: 8/8/2019]